

00366.000125.

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
	:	Examiner: Yehdega Retta
MICHAEL MÜLLER)	
	:	Art Unit: 3622
Application No.: 09/810,395)	
	:	Confirmation No.: 6004
Filed: March 19, 2001)	
	:	
For: APPARATUS, METHOD AND)	
PROGRAM FOR FORMULATING	:	
AND SOLVING PROBLEMS)	
OVER A NETWORK	:	May 5, 2009

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR REFUND

Sir:

In connection with the above-identified application, Applicant requests a refund of \$555.00 for an overpayment of an extension fee that was charged to Deposit Account 50-3939. It is requested that the refund be applied as a credit to that Deposit Account. The reason for the refund is explained below.

On March 19, 2001, Applicant claimed small entity status in connection with the filing of the above-identified application.

On November 24, 2008, Applicant filed a Response to Office Action, Submission of Sworn English Translation, and Petition for Extension of Time in the above-identified application (copy attached) in response to the Office Action dated May 23, 2008.

While only a fee of \$555.00 (small entity) was due at that time, an extension fee of \$1,110.00 (large entity) was charged.

Accordingly, Applicant hereby requests a refund and authorizes the Commissioner to credit Deposit Account No. 50-3939 in the amount of \$555.00 to resolve this matter.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should be directed to our address given below.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'L. P. Diana', is written over a horizontal line.

Leonard P. Diana
Attorney for Applicant
Registration No. 29,296

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

FCIS_WS 2673421v1

Electronic Acknowledgement Receipt

EFS ID:	4345311
Application Number:	09810395
International Application Number:	
Confirmation Number:	6004
Title of Invention:	Apparatus, method and program for formulating and solving problems over a network
First Named Inventor/Applicant Name:	Michael A. Muller
Customer Number:	05514
Filer:	Leonard P. Diana/Mark Chanderdatt
Filer Authorized By:	Leonard P. Diana
Attorney Docket Number:	00366.000125.
Receipt Date:	24-NOV-2008
Filing Date:	19-MAR-2001
Time Stamp:	17:43:33
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	\$ 1110
RAM confirmation Number	5109
Deposit Account	503939
Authorized User	

The Director of the USPTO is hereby authorized to charge indicated fees and credit any overpayment as follows:

Charge any Additional Fees required under 37 C.F.R. Section 1.16 (National application filing, search, and examination fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.17 (Patent application and reexamination processing fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.19 (Document supply fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.20 (Post Issuance fees)

Charge any Additional Fees required under 37 C.F.R. Section 1.21 (Miscellaneous fees and charges)

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		resp00366000125.pdf	12560	yes	4
			ef5c28c098f0f8a1f0d5e971f0e9b551c970644		

Multipart Description/PDF files in .zip description

Document Description		Start	End
Amendment/Req. Reconsideration-After Non-Final Reject		1	1
Applicant Arguments/Remarks Made in an Amendment		2	4

Warnings:

Information:

2	Miscellaneous Incoming Letter	00366000125Dec.PDF	3655874	no	74
			af5c28c098f0f8a1f0d5e971f0e9b551c970644		

Warnings:

Information:

3	Fee Worksheet (PTO-06)	fee-info.pdf	29929	no	2
			9a16e047a5542106157376773253498fb4165d		

Warnings:

Information:

Total Files Size (in bytes):

3698363

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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MICHAEL MÜLLER)	
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Filed: March 19, 2001)	
	:	
For: APPARATUS, METHOD AND)	
PROGRAM FOR FORMULATING :	:	
AND SOLVING PROBLEMS)	
OVER A NETWORK	:	November 24, 2008

Mail Stop: Amendment
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 23313-1450

RESPONSE TO OFFICE ACTION,
SUBMISSION OF SWORN ENGLISH TRANSLATION,
AND PETITION FOR EXTENSION OF TIME

Sir:

Applicant petitions to extend the time for response to the Office Action dated May 23, 2008, to and including Sunday, November 23, 2008. The extension fee of \$555.00 (small entity) is being paid concurrently. Please charge any additional fee required, and credit any overpayment, to Deposit Account 06-1205.

In response to that Office Action, the Examiner is respectfully requested to consider the following Remarks beginning on page 2.

REMARKS

This application has been reviewed in light of the Office Action dated May 23, 2008. Claims 1, 4-22, 55-59, 61-82, 93, 94, and 98-101 are presented for examination, of which Claims 1, 55, and 65 are in independent form. Favorable reconsideration is requested.

Claims 1, 4, 6-9, 11, 13-22, 55, 56, 58, 59, 61-67, 69-83, 93, 94, and 98-101 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent 7,155,157 (*Kaplan*). Claims 5, 12, 57, and 68 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Kaplan* in view of Official Notice; and Claim 10 was rejected as being unpatentable over *Kaplan* in view of U.S. Patent 6,223,165 (*Lauffer*).

Kaplan has a filing date of September 20, 2001, and claims priority to provisional application no. 60/234,438, filed on September 21, 2000. Without conceding that *Kaplan*'s provisional application discloses all relevant portions of his issued patent, Applicant notes that the priority date for the subject application predates the filing of both of *Kaplan*'s applications. Specifically, the subject application claims priority to European Application No. 00120302.5, which was filed on September 15, 2000. Accompanying this Response is a sworn English translation of that priority document, a certified copy of which was submitted on July 25, 2001. While Applicant submits that the priority document supports the pending claims, in accordance with MPEP § 201.15, the Examiner is respectfully requested to confirm for herself that Applicant is entitled to his priority date, and upon such confirmation, to withdraw *Kaplan* as a reference against the subject application.

The Office Action does not assert that any of the other references cited against Claims 1, 4-22, 55-59, 61-82, 93, 94, and 98-101 renders them anticipated or unpatentable in the

absence of *Kaplan*. Therefore, Applicant submits that Claims 1, 4-22, 55-59, 61-82, 93, 94, and 98-101 are patentable and respectfully requests that the outstanding rejections under 35 U.S.C. §§ 102(e) and 103(a) be withdrawn.

In addition, Applicant respectfully traverses the taking of Official Notice relating to the state of the art of the Internet at the time of the invention. Official Notice was taken that “anonymous communication is old and well known in the art of the Internet.” (Office Action, page 4). MPEP 2144.03 states, in part,

“Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. ...

...[A]ssertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21. See also ... *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) (‘[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.’).”

Applicant submits that the state of the art of the Internet at the time of the invention is an area of esoteric technology. Moreover, Applicant submits that an anonymous communication linked to an award system was not in the state of the art prior to the invention. Accordingly, should a rejection be entered or repeated based in whole or in part on the same Official Notice, Applicant respectfully requests that the Examiner produce a reference in support of the Officially Noticed statement.

In view of the foregoing remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100 or by facsimile at (212) 218-2200. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

/Leonard P Diana/

Leonard P. Diana
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